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No. 89-1925

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OCTOBER TERM, 1990

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, AFL-CIO and CHARLES J. HUTTINGER,

Petitioners,

v.

FRANK LANDRY, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION

STEPHEN B. MOLDOF
Counsel of Record
ANN E. O'SHEA
MICHAEL L. WINSTON
THOMAS N. CIANTRA

COHEN, WEISS AND SIMON
330 West 42nd Street
New York, New York 10036
(212) 563-4100

Attorneys for Petitioners Air Line Pilots Association, International, AFL-CIO and Charles J. Huttinger

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Petitioners ALPA and Huttinger submit this supplemental brief to apprize the Court of the *en banc* decision of the Court of Appeals for the D.C. Circuit in *Yellow Bus Lines, Inc.* v. *Drivers, Local 639*, No. 86-5135 (D.C. Cir. Sept. 4, 1990), which underscores the need for granting review in this case.

The *en banc* D.C. Circuit, when confronted, as here, with the direct intrusion on the "elaborate web of statutes and regulations govern[ing] labor-management relations," Slip Op. at 14, threatened by a broad application of RICO, took the opposite approach to that of the Fifth Circuit in *Landry*. Because the D.C. Circuit found

no evidence of Congressional intent to " 'RICOize' broad areas of labor law," Slip Op. at 15, and effect a "major restructuring of our legal landscape," *id.* at 14, it held RICO inapplicable to union actions (in *Yellow Bus*, union strike violence) which were already subject to the "delicate balance" of interests under federal labor law, *id.*, and which did not involve the "sort of hijacking" of an enterprise "that the RICO statute was designed to combat." *Id.* at 16.

> Congress is certainly free to lay an extensive RICO blanket over entire areas of federal regulation, making attorneys fees and treble damages available in areas such as federal labor law. However, we are confident that if Congress had intended to so dramatically alter our legal terrain, it would have done so clearly and unequivocally.

Id. at 14. The court found further support for its approach in basic principles of criminal statutory construction which are applicable because RICO "has criminal as well as civil applications." *Id.* at 15. The Fifth Circuit's directly contrary approach, in applying RICO to union conduct governed by the duty of fair representation, warrants this Court's review. *See* Petition at 10-21; Petitioners' Reply at 1-4.

Yellow Bus additionally recognized that a claim under 18 U.S.C. § 1962(c) fails where a plaintiff cannot demonstrate, *inter alia*, that the defendant managed or directed the enterprise's affairs through a pattern of racketeering activity. Slip Op. at 4 & n.2, 11-13. Although plaintiffs herein also made no such showing, and indeed failed to present evidence even of a linkage between Huttinger's current receipt of retirement benefits and the purported enterprise, the Fifth Circuit allowed plaintiffs' RICO claim to survive summary judgment. This conflict with *Yellow Bus* and with this Court's RICO decisions, *see* Petition at 23-24, provides further compelling grounds for review.

CONCLUSION

For the reasons stated above and in petitioners' prior submissions, the writ should issue.

Respectfully submitted,

STEPHEN B. MOLDOF
Counsel of Record
ANN E. O'SHEA
MICHAEL L. WINSTON
THOMAS N. CIANTRA

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330 West 42nd Street
New York, New York 10036
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